Issued: February 5, 1998.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–3424 Filed 2–6–98; 11:21 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 96–26]**

### Richard S. Wagner, M.D.; Revocation of Registration; Denial of Request to Modify Registration

On February 8, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA), issued an Order to Show Cause to Richard S. Wagner, M.D., (Respondent) of Fresno, California and Hanover, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AW8019033, under 21 U.S.C. 824(a), and deny any pending applications for modification of his registration to change his address from California to Pennsylvania, under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified two applications for the renewal of his DEA Certificate of Registration and that he was not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania.

Respondent, proceeding pro se, filed a request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia on August 27, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Ultimately, the alleged lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania was not pursued as an independent basis for revocation. After the hearing, counsel for the Government submitted proposed findings of fact, conclusions of law and argument. However, Respondent only filed a motion to expedite the matter, which was denied by Judge Bittner because Respondent did not provide any compelling reason to decide this matter before other pending cases. On October 20, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked, his request for modification be denied, and any pending applications for registration be denied.

On November 26, 1997, Respondent filed a response to Judge Bittner's decision, which reiterated the arguments Respondent raised at the hearing and also sought to introduce evidence not presented at the hearing. On November 28, 1997, Government counsel filed a motion to strike Respondent's exceptions or, in the alternative, to seek leave to file a response to Respondent's exceptions. The Government argued that Respondent's exceptions were not timely filed. Judge Bittner denied the Government's motion to strike Respondent's exceptions, finding that they were filed within the time period that she had authorized for the filing of exceptions, however, Judge Bittner provided the Government the opportunity to file a response to Respondent's exceptions. On December 17, 1997, the Government filed its response and also a motion to strike Respondent's additional exhibits arguing that the record is closed and Respondent could have introduced the exhibits at the hearing, but did not do so. Thereafter, on December 18, 1998, Judge Bittner denied the Government's motion to strike the additional exhibits, finding the ''[p]ursuant to 21 C.F.R. § 1316.66(b) (1997), exceptions filed pursuant to 21 C.F.R. § 1316.66(a) are to become part of the record of the proceeding.'' However, Judge Bittner recommended that ''the Deputy Administrator not consider these documents in rendering his final order.'' On December 18, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator, pursuant to 21 C.F.R. 1316.67, hereby issued his final order based upon findings of fact and conclusions of law as hereinafter set forth. In rendering his decision in this matter, the Acting Deputy Administrator has not considered Respondent's exceptions, including the attached additional documents, to the extent that they seek to introduce evidence not submitted at the hearing in this matter, since Respondent did not offer any explanation as to why this information was not presented at the hearing. After careful consideration of the record, the Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a psychiatrist who received his medical degree from a school in Guadalajara, Mexico, and became board certified in psychiatry in April 1981. In October 1981, Respondent moved to Warren, Pennsylvania where he established a private practice and also became the medical director of the psychiatric unit of Warren General Hospital. In 1982, the hospital suspended Respondent's hospital staff privileges, and in 1985, his hospital privileges were permanently revoked. According to Respondent, this action was taken by the hospital as a result of a scheme by county officials to take a piece of Respondent's property that was in a desirable location, and to force Respondent to become a county employee. In addition, Respondent testified that county officials made false accusations about his professional competence and tried to force him into selling his property to the county at a loss.

According to Respondent, he was told by hospital officials that if he resigned from the hospital, his employment record would not reflect the suspension and revocation of his staff privileges. Thereafter, Respondent resigned from the hospital. Subsequently, Respondent had a job offer in Ohio and he applied for an Ohio medical license. This application was denied by the Ohio licensing agency (Ohio Board) because he did not disclose on the application that he had lost his hospital privileges in Pennsylvania. Respondent testified that he did not disclose the hospital's action because he relied upon the promises of the hospital officials that his employment record would not reflect such action. Other than his own assertions, Respondent did not offer any evidence to corroborate that such an agreement with the hospital existed.

As a result of the Ohio Board's action, the New York licensing agency (New York Board) suspended Respondent's license to practice medicine in that state because of his misrepresentations on the Ohio application for licensure. It appears that the New York Board stayed the suspension. Subsequently, in 1987, the Pennsylvania State Board of Medicine (Pennsylvania Board) suspended his Pennsylvania medical license for two years based on his misrepresentations to Ohio, stayed the suspension, and placed Respondent on probation.

In 1989, Respondent filed a civil action in the United States District Court for the Western District of Pennsylvania against Warren General

Hospital and various county officials, claiming that their actions violated both his constitutional rights and antitrust laws. The Acting Deputy Administrator finds it significant to note that Respondent did not mention in his civil suit the purported promises made by the hospital officials that his employment records would not reflect the suspension and revocation of his hospital privileges if Respondent resigned from the hospital. The court granted summary judgement for the hospital and county officials, finding that Respondent presented neither direct nor circumstantial evidence sufficient to establish the existence of a conspiracy and Respondent's case was based on ''little more than his own suspicions and beliefs.'' At the hearing before Judge Bittner, Respondent contended that the lawyer representing him in the civil suit had many personal problems and therefore was ineffective in her representation of Respondent.

On May 25, 1994, Respondent was involuntarily committed to the psychiatric unit of a local Pennsylvania hospital after a mental health review officer found that he posed a danger to others. Respondent was released after 20 days and on June 13, 1994, Respondent's Pennsylvania medical license was automatically suspended. Respondent testified that his involuntary commitment was a result of untrue accusations made by his wife. Following an evaluation and report by an independent psychiatrist who ''did not find any psychiatric impairment which would prevent [Respondent] from making adequate medical judgements in the practice of medicine,'' the Pennsylvania Board reinstated Respondent's medical license on March 28, 1995.

Regarding the DEA applications that are the subject of these proceedings, the Acting Deputy Administrator finds that in 1992, Respondent submitted an application for renewal of his DEA Certificate of Registration issued to him in Pennsylvania. On this application, Respondent answered ''no'' to the liability question which asks: ''Has the applicant ever been convicted in connection with controlled substances under State or Federal law or surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied or ever had a professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' In 1994, Respondent's registration was transferred from Pennsylvania to California. Thereafter, on May 24, 1995, Respondent executed another renewal application for his DEA registration. Respondent answered the same liability question in the negative as he had done on his 1992 renewal application. On the 1995 renewal application, Respondent crossed out the pre-printed California address and wrote in an address in Pennsylvania. DEA interpreted this alteration on the application to be a request by Respondent to modify his DEA registration by changing the address.

After receiving the 1995 renewal application, DEA sent a letter to Respondent dated August 16, 1995, offering Respondent the opportunity to voluntarily surrender his DEA registration in lieu of the initiation of proceedings to revoke his registration, in light of his failure to disclose on the renewal applications actions taken by state licensing agencies. In addition, Respondent was informed that because revocation proceedings would be initiated should Respondent not surrender his registration, Respondent's request to modify his registration from California to Pennsylvania would not be approved at that time. Respondent was further advised in the letter that as a result, he was not authorized to handle controlled substance in Pennsylvania.

On August 25, 1995, Respondent responded by filing a civil action in the United States District Court for the Eastern District of Pennsylvania against two DEA employees, claiming both a violation of his civil rights and defamation. A hearing was held by the court on August 28, 1995, to determine whether DEA should be temporarily restrained from taking action against Respondent's DEA Certificate of Registration. At his hearing, Respondent argued that all state disciplinary action against him stemmed from his problems at Warren General Hospital and from his reliance on the promises made by hospital officials that his loss of hospital privileges would not be reflected in his employment records if he resigned from the hospital. Respondent also argued that the liability question on the DEA applications was ambiguous, and that he had at some point contacted DEA headquarters in order to clarify the meaning of the question on the applications. Respondent asserted that some DEA employee told him to answer the question in the negative since the actions taken by the state boards did not pertain to his handling of controlled substances. The court denied Respondent's request for a temporary restraining order against the DEA finding that Respondent, instead of accepting responsibility for answering the liability question on the applications incorrectly, tried to blame an unidentified DEA employee. The court ultimately dismissed Respondent's civil complaint against the two DEA employees on March 1, 1996, on the grounds that Respondent failed to effect proper service on the defendants.

At the hearing before Judge Bittner, Respondent reiterated his contention that in answering the liability question on his application for Ohio licensure, he relied upon the representations made by Warren General Hospital officials that his employment record would not reflect that he had lost his hospital privileges. However, the Acting Deputy Administrator finds that Respondent did not present evidence to corroborate this contention. In addition, Respondent testified at the hearing before Judge Bittner that in answering the liability question on the DEA renewal applications regarding whether any action had been taken against a state professional license, he relied upon the advice of an unidentified DEA employee. Respondent was not able to remember the name of the person with whom he spoke, nor the position of the individual. Again, Respondent did not offer any evidence to corroborate his assertion.

The Deputy Administrator, in his discretion, may revoke a DEA Certificate of Registration and deny any renewal applications if the registrant ''has materially falsified any application filed pursuant to or required by this subchapter. * * *'' 21 U.S.C. 824(a)(1). In addition, the Deputy Administrator may also revoke a DEA Certificate of Registration and deny any pending applications for registration ''if he determines that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f) and 824(a)(4). A request for modification of registration is considered an application for registration pursuant to 21 CFR 1301.51.

In determining whether or not a registration would be inconsistent with the public interest, the Deputy Administrator is to consider the following factors set forth in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In considering whether revocation of Respondent's DEA Certificate of Registration is appropriate under 21 U.S.C. 824(a)(1), the Acting Deputy Administration finds that it is undisputed that Ohio denied Respondent's application for a license to practice medicine; that New York suspended Respondent's medical license; that in 1987, Pennsylvania suspended Respondent's medical license and then placed it on probation; and that beginning in June 1994, Respondent's Pennsylvania medical license was suspended for nine and one half-months. It is also undisputed that Respondent answered a question on both his 1992 and 1995 applications for renewal of this DEA registration indicating that no action had ever been taken against any of his professional licenses.

DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Bobby Watts*, M.D., 58 FR 4699 (1993); *Hebert J. Robinson, M.D.*, 59 FR 6304 (1994).

Like Judge Bittner, the Acting Deputy Administrator does not find credible Respondent's explanation for why he did not disclose the loss of his hospital privileges in Pennsylvania on his application for an Ohio medical license which resulted in the denial of the application and the subsequent actions taken against his New York and Pennsylvania medical licenses. Respondent did not provide any corroborating evidence that the hospital staff in Pennsylvania agreed to remove any reference to Respondent's loss off staff privileges if he resigned. In addition, the Acting Deputy Administrator does not find credible Respondent's assertion that he incorrectly answered the liability question on his DEA renewal applications because some unidentified DEA employee told him to do so. Therefore, the Acting Deputy Administrator concludes that Respondent knew or should have known that his response to the liability question was false and consequently, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1). The question now becomes whether the Acting Deputy Administrator, in exercising his discretion, believes that revocation is the appropriate sanction in light of the facts and circumstances of this case. See, *Martha Herandez, M.D., 62* FR 61,145 (1997).

The Acting Deputy Administrator concludes that revocation is warranted in this case. Respondent has repeatedly failed to acknowledge and accept responsibility for his falsifications of his applications. Instead, Respondent tries to blame others for his predicament. Respondent contends that officials of Warren General Hospital and county officials in Pennsylvania are to blame for the Ohio Board action; that the fact that Ohio's action was entered in the National Practitioner Databank is to blame for the New York Board action and the Pennsylvania Board action in 1987; that his wife is to blame for the 1994 Pennsylvania Board action; and that the ambiguity of the liability question and an unidentified DEA employee are to blame for his incorrect answer on the DEA renewal applications. This failure to accept responsibility raises serious questions as to Respondent's ability to accept the responsibilities inherent in a DEA registration.

In considering whether grounds exist to deny Respondent's request to modify his DEA registration and to revoke the registration pursuant to 21 U.S.C. 823(f) and 824(a)(4), it should be noted that the factors specified in 21 U.S.C. 823(f) are to be considered in this disjunctive. The Deputy Administrator may rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, 54 FR 16,422 (1989).

As to factor one, it is undisputed that Respondent is currently licensed to practice medicine in Pennsylvania and therefore authorized to handle controlled substances in that state.

However, as Judge Bittner notes, ''although state authorization to handle controlled substances is a necessary condition for Respondent's registration with DEA, it is not dispositive of the question of whether his continued registration would be in the public interest.'' Regarding factors two and four, no evidence was placed in the record by either party regarding Respondent's experience in handling controlled substances, or his compliance with applicable laws relating to controlled substances. Likewise there is no evidence in the record that Respondent has ever been convicted of a controlled substance offense as referred to in factor three. However, Respondent's material falsification of his 1992 and 1995 applications for renewal of his DEA registration are clearly significant under factor five.

The Administrative Law Judge found that Respondent's material falsification of these applications, as well as his failure to accept responsibility for his actions support a finding that his continued registration would be inconsistent with the public interest and therefore revocation of his DEA registration is appropriate. Judge Bittner also recommended that denial of Respondent's request for modification of this registration is appropriate.

Respondent in his exceptions argues that Judge Bittner wrongly ignored and disallowed some of Respondent's evidence. The Acting Deputy Administrator has considered all of the evidence presented at the hearing in this matter and agrees with Judge Bittner's evidentiary rulings. Also in his exceptions, Respondent contends that there are witnesses available to corroborate his version of events and attempts to introduce documents into the record that were not presented at the hearing. The Acting Deputy Administrator has not considered this information because Respondent has not offered any explanation as to why he did not present this evidence at the hearing in this matter. In addition, Respondent argues that DEA has admitted that the question on its application is ambiguous because it has since modified the question on the application. The Acting Deputy Administrator concludes that the liability question on the applications at issue is not ambiguous. The fact that DEA has since modified the application does not support a conclusion that DEA has admitted otherwise. Respondent also asserts that his registration should not be revoked because ''at no time did I try to deceive.'' But, as the Acting Deputy Administrator has previously held, a registration may be revoked whether or not there is any intent by the applicant to deceive. See, *Martha Henandez, M.D.*, 62 FR 61,145 (1997). Finally, Respondent claims that ''the crime for which I am accused, condemned and sentenced is this and only this. I checked the wrong box on a renewal form for a DEA Certificate.'' The Acting Deputy Administrator finds that Respondent's attempt to minimize his actions is further support for the revocation of his DEA registration. Truthful answers to the liability questions on the application are extremely important, since they alert DEA as to whether further investigation of the applicant is necessary. See *Bobby Watts, M.D.*, 58 FR 46,995 (1993); *Ezzat E. Majd Pour, M.D.*, 55 FR 47,547 (1990).

The Acting Deputy Administrator concludes that in light of Respondent's material falsification of his applications

for renewal of his DEA registration, and his persistent attempts to blame others for his predicament, Respondent's request to modify his DEA registration must be denied and his DEA Certificate of Registration must be revoked.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AW8019033, issued to Richard S. Wagner, M.D., be and it hereby is, revoked. The Acting Deputy Administrator further orders that Dr. Wagner's request to modify his registration, and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective March 12, 1998.

Dated: February 2, 1998.

**Peter F. Gruden,**

*Acting Deputy Administrator.*

[FR Doc. 98–3217 Filed 2–9–98; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Procedures for Classifying Labor Surplus Areas

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection for Procedures Classifying Labor Surplus Areas.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATE:** Written comments must be submitted on or before April 13, 1998.

Written comments should evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** William McGarrity, U.S. Employment Service, Employment and Training Administration, Department of Labor Room N–4470, 200 Constitution Avenue., N.W., Washington, D.C. 20210, 202–219–5185, ext. 129. (This is not a toll-free number)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under Executive Orders 12073 and 10582, the Secretary of Labor is required to classify labor surplus areas (LSAs) and disseminate this information for the use of Federal agencies. Federal agencies utilize LSA classifications for various purposes including procurement decisions, food stamp waiver decisions, certain Small Business loan decisions, as well as other purposes determined by the agencies. The LSA listings are issued annually, effective October 1 of each year, utilizing data from the Bureau of Labor Statistics. Areas meeting the criteria are classified as Labor Surplus Areas.

The Department's regulations specify that the Department can add other areas to the annual LSA listing under the exceptional circumstance criteria. Such additions are based upon information contained in petitions submitted by the State employment security agencies (SESAs) to the national office of the Employment and Training Administration. These petitions contain specific economic information about an area in order to provide ample justification for adding the area to the LSA listing under the exceptional circumstance criteria. An area is eligible for classification as an LSA if it meets all of the criteria, and if the exceptional circumstance event is not temporary or seasonal. This data collection pertains only to data submitted voluntarily by States in exceptional circumstance petitions.

#### II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0207. There is no change in burden.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration, Labor.

*Titles:* Procedures for Classifying Labor Surplus Areas.

*OMB Number:* 1205–0207.

*Frequency:* On occasion.

*Affected Public:* States.

*Number of Respondents:* 52.

*Estimated Time Per Respondent:*

| Item | States | Annual hours | Total hour |
|---|---|---|---|
| Petitions ..... | 52 | 4 | 208 |

*Estimated Burden Hours:* 208.

*Total Estimated Cost:* $5,000.00.

Comments submitted in response to this will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 3, 1998.

**John R. Beverly, III,**

*Director, U.S. Employment Service.*

[FR Doc. 98–3342 Filed 2–9–98; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.